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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,877	08/06/2003	Ikuo Matsukura	241197US0	8215
22850	7590	07/22/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.			ZACHARIA, RAMSEY E	
1940 DUKE STREET			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			1773	

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,877

Applicant(s)

MATSUKURA ET AL.

Examiner

Ramsey Zacharia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/6/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The abstract of the disclosure is objected to because it is more than one paragraph in length. Correction is required. See MPEP § 608.01(b).
3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 7, 14, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 7, 14, and 21 are rendered indefinite because their meaning is unclear. It appears that the term "fluoropolymer (A)" is used to represent three distinct materials: (1) the fluoropolymer in claim 1, (2) a fluoropolymer obtained after post-polymerization fluorination,

and (3) a substantially linear fluoropolymer which has an alicyclic structure in its main chain which is a main chain of carbon atoms satisfying requirement (1) in claim 1.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-5, 8-12, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsukura et al. (US 2001/0024701 A1).

Matsukura et al. teach a pellicle for a photolithographic patterning process by means of a light having a wavelength of at most 180 nm comprising a fluorine-containing polymer (paragraph 0010). In the embodiment of Example 6, a pellicle is constructed with a membrane of polymer A and an adhesive of adhesive A (paragraphs 0093-0094). Polymer A and adhesive A are both formed from the same polymer, an alicyclic polymer of  $\text{CH}_2=\text{CHCF}_2\text{CF}_2\text{OCF}=\text{CF}_2$  having a glass transition of 90 °C and a refractive index of 1.36 (paragraph 0079-0080). This polymer appears to be the same as that of Example 5 in the instant application. Therefore, it should inherently have substantially no signals appearing on the higher magnetic field side than 2.8 ppm since the polymer of instant Example 5 has no distinct signals on the higher magnetic field side than 2.8 ppm.

***Claim Rejections - 35 USC § 102 / 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 7, 13, 14, 20, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Matsukura et al. (US 2001/0024701 A1).

Matsukura et al. teach all the limitations of claims 6, 7, 13, 14, 20, and 21, as outlined above, except for (a) specifying that the fluoropolymer is polymerization at a temperature of at most 15 °C and (b) specifying that the fluoropolymer is formed by fluorinating a preformed polymer. However, these limitations are product-by-process limitations.

When the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the applicant to present evidence from which the examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F. 2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or

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obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) and MPEP § 2113. Regarding claims 6, 13, and 20, the temperature at which the polymerization occurs appears to affect the rate of polymerization but not the final product, particularly since the temperature used by Matsukura et al. is 18 °C, only 3 degrees higher than the disclosed range. Regarding claims 7, 14, and 21, the final product appears to be identical regardless of whether some of the fluorine is added after polymerization, particularly since the fluoropolymer of claims 7, 14, and 21 is fluorinated such that it becomes the same as fluoropolymer (A).

### ***Conclusion***

11. The rejection under 35 U.S.C 102(b) put forth in paragraph 9 above will be withdrawn upon filing of a certified English translation of the original patent to which priority is claimed, in addition to the certified copy of the Japanese application as required by 35 U.S.C. 119(b).

However, the rejection put forth in paragraph 9 will then be reapplied under 35 U.S.C. 102(e).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Zacharia whose telephone number is (571) 272-1518.


The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Ramsey Zacharia**  
Primary Examiner  
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